

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE:)
LARRY FREDERICK and SHARON) CHAPTER 11
FREDERICK,)
Debtors.)
M&T BANK) CASE NO. 18-70870-JAD
Movant,) Doc. No. _____
v.) Related to Doc. Nos. 88, 103
LARRY FREDERICK and SHARON) Hearing Date: Tuesday, July 14, 2020 at
FREDERICK,) 10:00 a.m.
Respondents.)

**REPLY TO GROWMARK FS, LLC'S RESPONSE TO
M&T BANK'S MOTION FOR RELIEF FROM THE AUTOMATIC STAY**

M&T Bank, by and through its undersigned counsel, submits this Reply to Growmark FS, LLC’s (“Growmark”) Response (the “Response”), (ECF No. 103), to M&T Bank’s Motion for Relief from the Automatic Stay (the “Motion”), (ECF No. 88), stating as follows:

1. The Motion asserts that “[t]he security interests granted [to M&T Bank] by the General Security Agreements are first priority liens by virtue of the UCC filings and various General Subordination Agreements executed by Growmark FS, LLC, except that FSA has a first lien on certain personal property, including the livestock owned by the Debtors.” Motion at ¶ 19.

2. The Response asserts that the above statement “is not correct as stated.” Specifically, it claims that, pursuant to that certain General Subordination Agreement dated July 26, 2017¹ (the “July 26, 2017 GSA”) (attached to the Response as Exhibit 2), “Growmark’s lien is

¹ The Response incorrectly dates the General Subordination Agreement as of July 25, 2017.

subordinated to M&T to the amount of \$100,000 only.” Response at ¶ 3.

3. It is true that pursuant to the July 26, 2017 General Subordination Agreement, the Debtors’ obligations to Growmark are subordinated to the Debtors’ obligations to M&T Bank “under a Multiple Disbursement Term Note and its associated loan documents dated on or about even date herewith in the amount of \$100,000 as amended from time to time.”

4. The Response, however, ignores the existence of a prior General Subordination Agreement between M&T Bank and Growmark dated as of August 1, 2016 (the “August 1, 2016 GSA”). A true and correct copy of the August 1, 2016 GSA is attached as **Exhibit A** and incorporated by reference.

5. The August 1, 2016 GSA provides, in pertinent part:

Creditor [Growmark], for value received, and intending to be legally bound, hereby subordinates, for the benefit of Lender [M&T Bank], the Subordinated Obligations (defined below) to the Primary Obligations (defined below) and agrees to the other provisions of this Agreement. . . .

“Primary Obligations” means collectively, any and all obligations owed by Borrower [the Debtors] to Lender [M&T Bank], whether now existing or hereafter incurred, of every kind and character

“Subordinated Obligations” means collectively, any and all obligations owed by Borrower [the Debtors] to Creditor [Growmark] whether now existing or hereafter incurred of every kind and character

See Ex. A at 1.

6. There is also another General Subordination Agreement in favor of M&T Bank dated as of February 28, 2017 (the “February 28, 2017 GSA”), which is in substantially the same form as the August 1, 2016 GSA.

7. Accordingly, pursuant to the August 1, 2016 GSA and February 28, 2017 GSA, all of the Debtors’ obligations to Growmark were and continue to be subordinated to all of the Debtors’ obligations to M&T Bank.

WHEREFORE, M&T Bank respectfully requests that this Honorable Court enter an order, (i) granting the Motion in its entirety; (ii) lifting the automatic stay; and (iii) granting any other or further relief this Court deems just and proper.

Respectfully submitted,

DENTONS COHEN & GRIGSBY P.C.

Dated: July 13, 2020

By: /s/ William E. Kelleher, Jr.

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing was electronically filed and accordingly was served upon all parties currently registered to receive electronic notices via this Court's CM/ECF Notification system. In addition, the undersigned caused a copy of the foregoing to be served upon the following parties in the manner indicated on this 13th day of July 2020.

Via Electronic Mail

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